JUN 26 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

BEARD & KULTGEN
P.O. Box 529
Waco, Texas, 76703
THOMAS P. BROWN, III
1008 20th St., Northwest
Washington, D. C.
Attorneys for Petitioner

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

TABLE OF CONTENTS

(a) Reference to Opinions Delivered in the Courts Below 1

(b) Statement of Grounds on Which Jurisdiction of the Supreme Court Is Invoked 2

(c) Questions Presented for Review 2

(d) Constitutional Provisions and Statutes Which the Case Involved 2

(e) Statement of the Case (Which Specifies How and When Federal Questions Were Raised) 3

(f) Argument 7

(g) Appendix A—Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas A1

(h) Appendix B—Judgments of the Trial Court A4

(i) Appendix C—Text of Constitutional and Statutory Provisions A12

Statutes

Act of June 25, 1948, c. 646, 62 Statutes 929, 28 U.S.C. 1257(3) 2

Amendment XIV, Section 1, Constitution of the United States 2, 3, 11

Art. 8, Sec. 2, Texas Constitution 3

Art. 7150(7), R.C.S. Texas 1925, Amended by Acts of Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1 (Art. 7150-7), V.A.T.C.S. 3, 7, 9

Housing Act of 1949, Acts of July 15, 1949, c. 338, Sec. 2, 63 Statutes 413, Title 42, U.S.C., Sec. 1441 ..... 3, 11, 12

Sec. 221 (d) 3, National Housing Act, Title U.S.C., Sec. 1515(1) 3, 12

Cases

City of Houston v. *Scottish Rite Benevolent Association*, 230 S. Ct. 978 (1924) 8

McLaughlin v. *State of Florida*, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964) 11

Moses Lake Homes v. *Grant*, 365 U.S. 744, 81 S. Ct. 370, 6 L. Ed. 2d 66 (1960) 12

Phillips Chemical Company v. *Dumas Independent School District*, 361 U.S. 376, 80 S. Ct. 457, 4 L. Ed. 2d 384 (1960) 12

River Oaks Garden Club v. *City of Houston*, 370 SW 2d 851 (1963) 8

Santa Rosa Infirmary v. *City of San Antonio*, 259 SW 926 (1924) 8, 9

Sioux City Bridge Company v. *Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 349 (1922) 11

Walters v. *City of St. Louis*, 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 66 (1954) 11

IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

This is the petition for writ of certiorari of Methodist River Oaks Apartments, Inc., a Texas non-profit corporation. Respondents are the City of Waco, Texas, and the La Vega Independent School District of McLennan County, Texas.

(a) The only opinion rendered below was that of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas, which was reported in 409 SW 2d 485. A copy of this opinion is appended. Review of the judgment of the Court of Civil Appeals was sought in the Supreme Court of Texas by application for writ of error.

This was refused without opinion, with the notation "Refused. No reversible error."

(b) The ground on which the jurisdiction of this Court is invoked is as follows:

Petitioner, a Texas non-profit corporation whose sole purpose is to improve housing conditions and to promote racial integration in a negro ghetto neighborhood, sought ad valorem tax exemption for its apartment complex in the City of Waco and the La Vega Independent School District. Texas law provides ad valorem tax exemption for the property of certain charitable institutions. Though Petitioner meets the criteria for such exemption under Texas law, the exemption which it sought was denied. Denial of exemption was a denial to Petitioner by Respondents and ~~over~~ the Texas Courts of equal protection of the law provided by Amendment 14, Sec. 1 of the Constitution of the United States. The statutory provision believed to confer jurisdiction on this Court is the Act of June 25, 1948, c. 646, 62 Statutes 929, 28 U.S.C. 1257 (3). The date of the action of the Supreme Court of Texas in refusing Petitioner's application for writ of error was March 11, 1967. The date on which Petitioner's motion for rehearing of this refusal was April 26, 1967.

(c) The question presented for review is:

Did the refusal of tax exemption on Petitioner's apartment complex violate the equal protection provision of Amendment XIV, Sec. 1 of the Constitution of the United States?

(d) The constitutional provisions and statutes which the case involves are:

(i) Amendment XIV, Sec. 1 of the Constitution of the United States;

(ii) The Housing Act of 1949, Acts of July 15, 1949, c. 338, Sec. 2, 63 Stat. 413, Title 42, U.S.C., Sec. 1441;

(iii) Article 8, Sec. 2 of the Texas Constitution;

(iv) Art. 7150 (7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1, Vernon's Annotated Texas Civil Statutes.

(e) The following are the material facts of the case:

Respondents seek to collect ad valorem taxes on an apartment complex owned by Petitioner. The complex is located in the City of Waco and the La Vega Independent School District. Petitioner claims exemption from ad valorem taxation under provisions of the Texas Constitution and Statutes, which exempt institutions of purely public charity. This tax exemption was denied by the Texas Courts.

Petitioner is a Texas non-profit corporation. It was formed by four Methodist churches (all negro congregations) in Waco, Texas. Its purpose is to provide housing for families of low and moderate income, with assistance from the Federal Housing Commissioner, and to conduct related charitable work. Its members are chosen by the churches. No officer, director or member of the corporation has or can profit from its operation. Petitioner's apartment complex is located in an area populated mostly by negroes, where nearly one-half of the housing is classified as "deteriorating or dilapidated."

It was built with a Federally insured loan under Sec. 221 (d) (3) of the National Housing Act. The complex is a first-class facility. It is integrated, having mostly ne-

gro, but some white tenants. It is open to anyone whose income is low enough to meet Federal standards. There are no similar facilities in Waco (pop. 100,000) where negroes are welcome.

The negro population of McLennan County, Texas is about 16% of the total. There is a high degree of residential segregation in the county. Various social problems are more severe among negroes than among whites in the county. Divorce and separation are more frequent. Earnings are much lower; 65% of negroes and only 23% of whites earn less than $3,000.00 per year. The median income of whites is more than twice that of negroes. The educational level prevalent among negroes is much lower than among whites. Dilapidated housing in the negro residential area is twice as common as in the rest of the county.

Goff, the secretary of Petitioner, testified that the churches organized the corporation "for the purpose of bettering the housing for negro people." Lowe, Petitioner's president, in testimony not admitted by the trial court, but heard for the purpose of perfecting Petitioner's exception to the Court's ruling, stated its purpose to be:

> ". . . to render a service to our people . . . we noted the substandard living conditions of our people and we also knew that there were possibly few other housing situations that they could go into that would lift their standards. We knew that the community had little to offer, especially our negro community. We were aware that possibly some few could go into some other areas of town, but there is a reluctance on the part of our people to do this; they did not know how they would be accepted and because of these things, generally, we were interested in developing something that would lift living standards of our people."

In answer to a question as to whether the complex would help negroes who do not actually live there, Lowe said:

> "Certainly . . . we thought it would give our people a sense of the possible; we thought that this standard, displaying the possible standard for them, would enhance others to reach this standard, developing ourselves, building. . . ."

Petitioner presented the testimony of three noted sociologists who described the effects of bad housing and of segregation. Professor Lee of Brooklyn College testified that:

> "Racially segregated housing gives its inhabitants a distorted impression of society. Children growing up under such conditions are especially damaged by such environment."

Professor Rose of the University of Minnesota, testified:

> ". . . people who live in inferior housing because of discrimination, especially those who are able to afford better housing but cannot get it because of the refusal of the owners, landlords and others to permit them to have it, feel that society regards them as inferior. . . Children in segregated housing especially raise questions about why they are segregated, worry about the rest of society's exclusion of them, feel uneasy in the presence of those responsible for segregation, and sometimes develop aggressive feelings."

Professor Lavantman of the University of Pennsylvania gave similar testimony.

All three professors expressed the opinion that the provision of decent, nonsegregated housing for persons to whom it would otherwise be denied is reasonably likely to prevent a substantial number of such persons from becoming burdens to society and to the State.

The City of Waco does not tax its YMCA, its YWCA (these organizations being specifically exempt under the Texas Constitution) or the property of certain fraternal orders. The YMCA and YWCA rent out rooms. The City has made no efforts to check the conditions under which this is done. In the past, the City has exempted two retirement residences from taxation. The school district has granted exemption to the property of a fraternal order.

The Federal question raised by this application was first raised by pleadings in the trial court. The pleadings in question (Plaintiff's second amended original petition) read:

> "The imposition of taxation upon said property would deny to Plaintiff equal protection under the laws in violation of Art. XIV, Sec. 1 of the Constitution of the United States. . . Under the laws and Constitution of the State of Texas, exemption from ad valorem taxation is granted to properties of purely public charities which are devoted to charitable purposes. An organization is an institution of purely public charity if it assumes, to a material extent, that which might otherwise have become the duty of the Community or the State. The public policy of the United States is that every American Family shall have a decent home and a suitable living environment and shall not be denied these things because of race. Plaintiff, through the operation of the subject property, is helping to fulfill the national policy and is thereby assuming what otherwise might be the duty of the State or of the Community. To deny its property . . . exemption from taxation, when such exemption is granted by the State to other institutions which are deemed 'charitable' by the State would violate national policy."

These contentions were rejected, by virtue of the trial court's judgment that the property was subject to taxation. They were rejected without discussion by the Court

of Civil Appeals, which sustained the trial court's judgment. They were, in effect, rejected by the Supreme Court of Texas when it overruled Petitioner's application of writ of error and motion for rehearing on application for writ of error.

(f) Petitioner's argument, amplifying its reasons relied for allowance of the writ, is as follows:

Texas exempts property of "institutions of purely public charity" from ad valorem taxation. Criteria for determining who qualifies for the exemption are well established. Petitioner, a non-profit corporation whose only functions are to improve housing conditions and to promote racial integration in a negro ghetto neighborhood, meets these criteria. There is no real difference, relevant to the purpose of the exemption, between Petitioner and those Texas institutions whose property is exempt. Therefore, denial of the exemption of Petitioner is a denial of equal protection. While construction of Texas law is not generally the function of this Court, it must see that the Texas Courts do not apply Texas law in violation of the federal Constitution. Therefore, this petition should be granted, and the judgments of the Courts below should be reversed. This is Petitioner's argument in a nutshell.

Taking the nut out of the shell, it is first necessary for the Court to understand the applicable Texas laws and how they have been applied here. Art. 8, Sec. 2 of the Texas Constitution provides that the Legislature may exempt from taxation property which is "owned and used exclusively by" institutions of "purely public charity." Art. 7150 (7), R.C.S. Tex. 1925, grants the exemption permitted by the Constitution. The statute defines charities as institutions which "dispense aid to members and others in distress . . . without regard to the poverty or riches of the recipient."

In *City of Houston* v. *Scottish Rite Benevolent Association*, 230 S. Ct. 973 (1924), the Texas Supreme Court said that an institution, to be a "purely public charity", must:

(a) Make no gain or profit;

(b) Accomplish ends wholly benevolent; and

(c) Benefit persons indefinite in number and personality by preventing them, through absolute gratuity, from becoming burdens to society or the state.

In *River Oaks Garden Club* v. *City of Houston*, 370 SW 2d 851 (1963), which involved a different "River Oaks" than the area with which we are concerned, the Texas Court expanded on the foregoing, holding that to qualify as a charity, an institution must "assume to a material extent, that which might otherwise become the duty or obligation of the Community or the State."

In our case, the Texas Court of Civil Appeals purported to apply the standards announced in *River Oaks* and *Scottish Rite*. The manner in which these standards were applied denied to Petitioner the equal protection guaranteed by the Fourteenth Amendment.

Petitioner is a non-profit corporation. None of its members or officers makes anything from its operation. It does charge rent for its apartments. The rent is used to pay its operating expenses and to pay the payment on the construction money mortgage on the apartment complex. However, under *Santa Rosa Infirmary* v. *City of San Antonio*, 259 SW 926 (1924), decided by the Texas Commission of Appeals in a judgment adopted by the Texas Supreme Court, this does not prevent its meeting the "no profit" and "absolute gratuity" tests of *Scottish Rite*. In *Santa Rosa*, a city sought to tax a hospital owned by a non-profit corporation. Most of the hospital patients

were paying patients. A debt incurred to build the hospital was paid out of its revenue. Nevertheless, the Texas Court held that the corporation was a purely public charity and that the hospital was exempt.

Understood in the light of *Santa Rosa*, the "no profit" and "absolute gratuity" tests mean simply that the members and officers of the institution must make no profit, and that the motive for operation of the institution must not be gain. Petitioner meets these tests.

The apartment complex is open to anyone whose income is small enough to meet Federal standards. Therefore, it meets the test of benefiting persons "indefinite in number and personality."

The Texas Court of Civil Appeals denied exemption here because the facilities in question are first-class and carry a fairly high rental. It held that because the apartments are for others than the very poor, no charity is involved. Thus, inferentially, it held that the "wholly benevolent" and "assumption of the burdens of society" tests were not met. But Petitioner never claimed to alleviate poverty, as such. It claims exemption because it has assumed a part of the state's burden to deal with the problems resulting from the peculiar and tragic history of the negro in our society. The record (as well as common knowledge) establishes that negroes, simply because of their history, are persons in "distress", regardless of their individual financial situations (which are not material, at any rate, under Art. 7150 (7)). Their "distress" is the degradation inflicted upon them by their history of slavery, segregation, and discrimination. An ugly aspect of this distress is the ghetto-neighborhood where negroes are crowded together as the result of poverty and other pressures which effectively exclude them from other areas,

despite all that the law has been able to do; where the available housing, even for those who could afford better if they were welcomed in other areas, is generally dilapidated; where the surroundings are such as to inspire a sense that it is hopeless to want anything better.

The aid given by Petitioner to victims of this distress lies partly in giving them ". . . a sense of the possible . . . a standard for which to strive" (in the words of Petitioner's president, Lowe). And, it lies partly in making a crack in the wall of the ghetto. There are two ways to destroy the ghetto. One is to disperse its residents throughout the rest of the community. The other way is to improve facilities in the ghetto area, and to bring in outsiders, so the residents are no longer segregated. You break down a negro ghetto when you bring in whites. To do this you must make the area attractive to whites. The housing provided must be good enough and cheap enough to make them willing to ignore the old taboos and come into a negro neighborhood. Petitioners have done this with some measure of success.

Certainly, if the English language means anything, this purpose is benevolent. Certainly if history teaches anything, this activity does constitute a real and constructive attempt to lift part of the burden of the State in a sensitive and difficult area where the State clearly has a duty to act. Thus, Petitioner meets the "wholly benevolent" and "assumption of burdens test." Since it meets all of the tests, it should be exempt.

What the Court below has done (no doubt, inadvertently) is to say that while relief of persons in "distress" is the hallmark of a charity, where the distress arises out of a person's race, the relief is not charity; that while the essential ingredient of a charity is that it

must bear part of the state's burden, when the burden borne arises from problems of race, the bearer of the burden is not a charity. Let this Court consider what it would do if the Texas Constitution and statute provided that charitable institutions, *save and except those which deal with social problems arising from race,* are exempt from taxation.

Having reviewed the Texas law as it has been applied here, let us now see how its application has violated the Federal Constitution. Discrimination in the exercise of the taxing power, whether by the terms of a statute or by the manner in which the statute is applied, violates Amendment XIV, Sec. 1. *Sioux City Bridge Company* v. *Dakota County,* 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 349 (1922). While the state is permitted under the 14th Amendment to make classifications under its laws, such classifications must be reasonable, not arbitrary; they must be real, not feigned; and the distinctions between classes must have some relevance to the purpose of the statute. *Walters* v. *City of St. Louis,* 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 66 (1954); *McLaughlin* v. *State of Florida,* 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964). The classification here is clearly arbitrary and feigned, in the light of the common understanding of the word "charity" and the tests which the Texas Courts have always applied. It has no relevance to the purpose of the tax exemption. Therefore, it should be rejected.

Further, the Housing Act of 1949 declares that the general welfare and security of the Nation require the realization, as soon as feasible, of the goal of a decent home and a suitable living environment for all Americans. In the paragraph containing this declaration of policy, all agencies of the Federal Government dealing

with housing are required to exercise their powers so as to promote the development of well planned, *integrated*, residential neighborhoods. The apartment complex was constructed with a loan insured by the United States under Section 221(d) 3 of the National Housing Act, Title 12, U.S.C., Sec. 1515 (1), to assist in relocating families moved as a result of urban renewal done under the Housing Act of 1949. Thus, the purpose of the complex is accomplishment of the policy announced by the Congress in the Housing Act of 1949. If it be admitted that Congress has, in the Housing Act of 1949, correctly stated the policy of the United States and the duty of the government, any purported classification under Texas law which grants tax exemption to institutions because they minister to needs, the fulfillment of which is the duty of the state, and denies such exemption to Petitioner, does not rest upon a real reasonable difference.

Finally, this Court has held that where the interests of the Federal Government are involved, those interests must be weighed in the balance in determining whether the power of the state has been applied unequally. *Phillips Chemical Company* v. *Dumas Independent School District*, 361 U.S. 376, 80 S. Ct. 457, 4 L. Ed. 2d 384 (1960); *Moses Lake Homes* v. *Grant*, 365 U.S. 744, 81 S. Ct. 370, 6 L. Ed. 2d 66 (1960). Thus the fact that the apartment complex was built in furtherance of national policy, and that the government insured loan must be paid out of the rentals from the complex, must be weighed in determining whether there has been a denial of equal protection.

For these reasons, certiorari should be granted. The judgment of the Texas Court of Civil Appeals should be reversed. The relief sought by Petitioner in the trial court should be granted.

Respectfully submitted,

BEARD & KULTGEN
P. O. Box 529
Waco, Texas

By .....
DAVID B. KULTGEN

.....
THOMAS P. BROWN
1008 20th St. NW
Washington, D. C.
Attorneys for Petitioner

APPENDIX A

Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas

This is an appeal from a judgment denying Methodist River Oaks Apartments, Inc., exemption from the payment of ad valorem taxes upon its property.

Methodist brought suit for a declaratory judgment that its apartments located in the City of Waco and La Vega School District be exempted from ad valorem taxes, on the ground that the Constitution and laws of Texas exempt from ad valorem taxes, properties of purely public charities, which are devoted to charitable purposes. Trial was before the court without a jury which, after hearing, entered judgment denying Methodist tax exemption as a chartable organization.

Methodist appeals on four points, contending the trial court erred in holding that its apartment complex was subject to ad valorem taxes.

Methodist is a non-profit corporation organized under the laws of Texas "to provide dwelling accommodations for families displaced from urban renewal areas," "and to assist further the provision of housing for moderate and low income families." It was formed by 4 negro Methodist churches. The members of the corporation are chosen by the churches which organized it; and no officer or member of the corporation has ever profited from its operation. The apartment complex contains 152 units; is a first-class facility; and is integrated. The units rent for $72.50 and $76.50 per month; one apartment has been furnished a tenant at a reduced rental, but no apartment has been provided rent free. The apartments are 79% occupied; are advertised in both Waco telephone book and in newspapers; are centrally air conditioned and